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PATENT APPLICATION  
10/511,056

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	Ralf Prenzel et al.
Serial No.:	10/511,056
Date Filed:	October 11, 2004
Group Art Unit:	2618
Confirmation No.:	6152
Examiner:	Safaipour, Bobbak
Title:	<b>METHOD FOR TRANSMITTING DATA, PARTICULARLY HAVING MULTIMEDIA CONTENTS, IN A MOBILE RADIO TELEPHONE NETWORK</b>

**MAIL STOP – APPEAL BRIEF - PATENTS**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**APPEAL BRIEF**

Further to the notice of appeal submitted on July 30, 2009, and the Notice of Panel Decision from Pre-Appeal Brief Review mailed August 7, 2009, Appellants hereby submit this appeal brief according to §41.37.

**APPELLANT'S BRIEF (37 C.F.R. § 41.37)**

This brief is submitted in support of Appellants notice of appeal from the decision dated February 12, 2009 of the Examiner finally rejecting claims 31-38 of the subject application.

**I. REAL PARTY IN INTEREST**

This application is currently owned by Siemens Aktiengesellschaft as indicated by an assignment recorded on October 11, 2004, in the Assignment Records of the United States Patent and Trademark Office at Reel 016485, Frame 0394.

**II. RELATED APPEALS AND INTERFERENCES**

There are no known appeals or interferences which will directly affect or be directly affected by or have a bearing on the Board's decision regarding this appeal.

**III. STATUS OF CLAIMS**

Claims 31-38 are pending in this application and all stand rejected under a Final Office Action mailed February 12, 2009. Claims 1-30 were previously cancelled without prejudice or disclaimer. Appellants present Claims 31-38 for appeal. Appendix A shows all pending claims.

**IV. STATUS OF AMENDMENTS**

No amendments have been filed subsequent to final rejection.

**V. SUMMARY OF CLAIMED SUBJECT MATTER**

Independent Claim 31 recites a method for transmitting data having multimedia content from a first communications unit (reference 10 in figure 1 and spec at [0039]; reference 110 in figure 2 and spec at [0042])<sup>1</sup> to a second communications unit (reference 40 in figure 1 and spec at [0039]; reference 114 in figure 2 and spec at [0042]) in a

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<sup>1</sup> References to the Specification are made to the published application (US 2005/0165897).

telecommunications network (spec at [0039] and [0043]), the method comprising: transmitting at least one transmission status message (figures 3 and 4) assigned to the data to the first communications unit; wherein, upon non-delivery of the data to the second communications unit, the transmission status message includes a non-delivery reason which is selected from at least two non-delivery reasons, wherein the at least two non-delivery reasons are that the data could not be delivered to the second communications unit and that the data could have been delivered, but were not received by the second communications unit (spec at [0050-54]).

Independent claim 38 recites a switching arrangement for transmitting data in a telecommunications network (spec at [0039] and [0043]) from a first communications unit (reference 10 in figure 1 and spec at [0039]; reference 110 in figure 2 and spec at [0042]) to a second communications unit (reference 40 in figure 1 and spec at [0039]; reference 114 in figure 2 and spec at [0042]), comprising an apparatus (reference 110 and spec [0042]) for producing a transmission status message (figures 3 and 4) which is assigned to the data to be transmitted to the second communications unit, the apparatus providing a signaling (spec at [0044]), upon non-delivery of the data to the second communications unit, with the transmission status message to the first communications unit including a non-delivery reason which is selected between at least two non-delivery reasons, wherein the at least two non-delivery reasons are that the data could not be delivered to the second communications unit and that the data could have been delivered, but were not received by the second communications unit (spec at [0050-54]).

## **VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

Claims 31-38 were rejected under 35 U.S.C. §103(a) as being unpatentable over International Application No. WO 01/28171 A1 by Kalevi Ratschunas, et al. ("*Ratschunas*") in view of U.S. Patent No. 7,127,264 issued to Daniel Hronek, et al. ("*Hronek*").

## VII. ARGUMENT

According to the invention as claimed, the capability to transmit either one of two specific non-delivery reasons need to be provided: (1) data could not be delivered to the second communications unit (MMS not deliverable); or (2) data could have been delivered, but were not received by the second communications unit (MMS deliverable but delivery not requested by terminal). Claim 31 recites "wherein, upon non-delivery of the data to the second communications unit, the transmission status message includes a non-delivery reason *which is selected from at least two non-delivery reasons*, wherein the at least two non-delivery reasons are that the data could not be delivered to the second communications unit and that the data could have been delivered, but were not received by the second communications unit." (emphasis added). Claim 38 recites a similar feature. "An object of the present invention is, therefore, to offer the transmitter or sender of data, particularly of a multimedia message (MM), *a more detailed item of information concerning the deliverability of the data which it has sent.*" (Specification at [0011]) (emphasis added). By providing more detailed information concerning the deliverability, the sender may then make informed decisions about whether to resend the message.

It is possible with the switching arrangement described to notify the sender, or the first communications unit, of a message if data which it has sent to a recipient, or the second communications unit, could not be delivered to the recipient at all. *The sender can then decide, for example, to send the corresponding data again.* Compared with the currently known state of the art on this matter, the *sender is therefore given the opportunity to distinguish the non-availability of a recipient from the status in which the recipient has not called up data provided for it, since it did not wish to receive the messages or was simply prevented from calling up the data (for example, due to technical problems).*

(Specification at [0028]) (emphasis added). Rather than a simple delivery confirmation, the specification teaches that more detailed delivery information is provided.

FIG. 3 shows, in general terms, the possible statuses 212 of the status field "X-Mms-Status" 210 in the message of the type "M-Delivery.ind" which is explained in detail in FIG. 4. A number of statuses are currently defined in the MMS specification [2, 5] which are transmitted in an MMS delivery status notification or transmission status messages "M-Delivery.ind." The various statuses indicate whether the MM has been transmitted successfully to the

recipient (status: "retrieved"), whether the MM has been rejected by the recipient (status: "rejected"), whether the recipient has received the notification concerning the arrival of the MM in its mailbox and can download it later (status: "deferred"), whether the recipient has not recognized the MM (status: "unrecognized") and whether the recipient has not downloaded the MM within the period of validity and has therefore not received it in full (status: "expired")

(Specification at [0050]). Thus, the invention requires that “the transmission status message includes a non-delivery reason *which is selected from at least two non-delivery reasons*, wherein the at least two non-delivery reasons are that the data could not be delivered to the second communications unit and that the data could have been delivered, but were not received by the second communications unit.”

The rejection improperly reduces the clear claim language to the simplified limitation that the non-delivery reason is selected from “at least two non-delivery reasons” without any further qualification of the nature of the non-delivery reason (in spite of the clear language of the claims). The rejection admits that “Ratschunas fails to specifically disclose that the non-deliver reason is selected from at least two non-delivery reasons.” (OA at 4). Hronek is therefore cited as disclosing,

a non-delivery reason which is selected from at least two non-delivery reason, wherein the at least two non-delivery reasons are that the data could not be delivered to the second communications unit (figure 6; col. 3, lines 42-49; when the attempted delivery of the short message failed because the intended user was out of the service area) and that the data could have been delivered, but were not received by the second communications unit (figure 6; col. 3, lines 42-49; when the attempted delivery of the short message failed because the intended user had his or her communication device turned off).

(OA at 4). This premise of the rejection fails, however, because Hronek does not teach or suggest “the transmission status message includes a non-delivery reason *which is selected from at least two non-delivery reasons*, wherein the at least two non-delivery reasons are that the data could not be delivered to the second communications unit and that the data could have been delivered, but were not received by the second communications unit.” Thus, Hronek discloses that the transmission message ALWAYS contains the non-delivery message that “the attempted delivery of the short message has failed.” (Hronek at 3:42-43). This is

the only non-delivery reason in the message. It will be present both if the intended user was out of the service area or had his or her communication device turned off.

The rejection claims that Hronek discloses two reasons why an attempted delivery of a short message has failed: (1) intended user was out of the service area; and (2) intended user had his or her communication device turned off. Obviously, both reasons fit only into the first non-delivery reason of the presently claimed invention, that “(1) data could not be delivered to the second communications unit,” but they do not fit into the second non-delivery reason of the presently claimed invention, that “(2) data could have been delivered, but were not received by the second communications unit.”

In particular, Hronek merely teaches that a single “failure” message is sent no matter what the reason for the delivery failure.

When the attempted delivery of the short message has failed because, for instance, the intended user was out of the service area, or had his or her communication device turned off, *the MSC 603 informs the HLR 602 of the failure*. The HLR 602 then turns on an SMS notification indicator flag for the subscriber, and the SMSC 601 retains the failed message for a later delivery attempt.

(Hronek at 3:43-49) (emphasis added). Hronek merely “informs the HLR of the failure,” without providing any information as to the reason for the delivery failure. This fact is confirmed by Hronek’s teaching that the HLR do only one action in response to being informed of the failure. Specifically, Hronek teaches that “HLR 602 then turns on an SMS notification indicator flag for the subscriber, and the SMSC 601 retains the failed message for a later delivery attempt.” Hronek does not teach or suggest deciding between sending the message again or discarding the message because the HLR has not receive sufficiently detailed information from the delivery failure message to inform such a decision. Thus, Hronek fail to teach or suggest “the transmission status message includes a non-delivery reason *which is selected from at least two non-delivery reasons*.” The invention as claimed in claims 31 and 38 is patentable in view of the combined teachings of Ratschunas and Hronek. The invention as claimed in the dependent claims is patentable for similar reasons.

**SUMMARY**

Appellants authorize the Commissioner to charge \$540.00 for the Appeal Brief and \$130.00 for the Petition for a 1-Month Extension of Time to Deposit Account No. 50-4871 of King & Spalding L.L.P. Appellants believe there are no additional fees due at this time, however, the Commissioner is hereby authorized to charge any fees necessary or credit any overpayment to Deposit Account No. 50-4871 of King & Spalding L.L.P.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Appellants' attorney at 512.457.2026.

Respectfully submitted,  
KING & SPALDING LLP  
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Date: October 30, 2009

SEND CORRESPONDENCE TO:

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**APPENDIX A - CLAIMS INVOLVED IN APPEAL**

1-30. (Cancelled)

31. (Previously Presented) A method for transmitting data having multimedia content from a first communications unit to a second communications unit in a telecommunications network, the method comprising:

transmitting at least one transmission status message assigned to the data to the first communications unit;

wherein, upon non-delivery of the data to the second communications unit, the transmission status message includes a non-delivery reason which is selected from at least two non-delivery reasons, wherein the at least two non-delivery reasons are that the data could not be delivered to the second communications unit and that the data could have been delivered, but were not received by the second communications unit.

32. (Previously Presented) The method as claimed in claim 31, wherein the data could not be delivered due to an incorrect address of the second communications unit or because the second communications unit was not available within a period of validity of the data.

33. (Previously Presented) The method as claimed in claim 31, wherein the data were not received because they were intentionally not downloaded to the second communications unit.

34. (Previously Presented) The method as claimed in claim 31, wherein the signaling comprises providing an item of information concerning the non-deliverability of the data in the transmission status message.



35. (Previously Presented) The method as claimed in claim 31, wherein the non-deliverability of the data applies if one of the correct receipt of the data and of a recipient notification message concerning the data to be transmitted to the second communications unit is not acknowledged by the second communications unit via a respectively associated confirmation message.

36. (Previously Presented) The method as claimed in claim 31, wherein the telecommunications network includes a switching arrangement via which the data is transmitted from the first communications unit to the second communications unit, and wherein the switching arrangement establishes the information and signals the information with the transmission status message to the first communications unit.

37. (Previously Presented) The method as claimed in claim 31, wherein the data is transmitted via a Multimedia Messaging Service using a Wireless Application Protocol.

38. (Previously Presented) A switching arrangement for transmitting data in a telecommunications network from a first communications unit to a second communications unit, comprising an apparatus for producing a transmission status message which is assigned to the data to be transmitted to the second communications unit,

the apparatus providing a signaling, upon non-delivery of the data to the second communications unit, with the transmission status message to the first communications unit including a non-delivery reason which is selected between at least two non-delivery reasons, wherein the at least two non-delivery reasons are that the data could not be delivered to the second communications unit and that the data could have been delivered, but were not received by the second communications unit.

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**APPENDIX B - EVIDENCE**

**NONE**

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**APPENDIX C: RELATED PROCEEDINGS**

**NONE**